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Ann W. Speckman
Speckman Law Group PLLC
1201 Third Avenue
Suite 330
Seattle, WA 98101

EXAMINER

DURAN, ARTHUR D

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3622

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 09/935,884	Applicant(s) FOWLER ET AL.	
	Examiner Arthur Duran	Art Unit 3622	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2, 4-13, 15, 17-25, 27-30, 32-34, 36-43, 46-50, 52-58 and 68-85 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-13, 15, 17-25, 27-30, 32-34, 36-43, 46-50, 52-58, 68-85 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 1-13, 15, 17-25, 27-30, 32-34, 36-58, and 68-85 have been examined.

Response to Amendment

2. The Amendment filed on 7/5/07 is sufficient to overcome the prior rejection. A reference has been added to the 35 USC 103 rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, 4, 6-12, 17-25, 27-32, 39-43, 46-53, 55-62, 68, 69, 71-73, 75-85 are rejected under 35 U.S.C. 103(a) as being unpatentable over Postrel (20040098317) in view of Fitzpatrick (20020046138).

Claim 1, 42, 59, 62, 68, 69, 71-73, 75-77, 79: Postrel discloses an automated marketing system implemented using a host controller system, comprising:

acquiring a user identifier, a merchant identifier, and a user behavior identifier at a point of transaction and communicating each of the identifiers to a host controller system over a communications network (Fig. 2; Fig. 4; Fig. 5);

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validating eligibility of at least one of the user identifier, the merchant identifier and the user behavior identifier to determine eligibility for participation in at least one marketing program (Fig. 2; Fig. 4; Fig. 5; Fig. 6);

performing a rate calculation processing step to determine eligibility of the user, the merchant and the user behavior for an award based on a preselected set of criteria (Fig. 5; Fig. 6; Fig. 4); and

communicating information relating to delivery of an award or an updated award status condition to the point of transaction over a communications network (Fig. 6; Fig. 4; Fig. 5).

Also, in regards to claim 42, Postrel further discloses accessing a user database from a host controller system, the user database associating a user identifier with additional user demographic information (Fig. 5); associating the user identifier with the additional user demographic information and validating the eligibility of the user to participate in at least one marketing program based on the user identifier and/or the additional user demographic information (Fig. 4; Fig. 5; Fig. 6).

Also, in regards to claim 59, Postrel further discloses validating eligibility of the merchant identifier for redemption of the award; performing a rate calculation processing step to determine whether the award balance satisfies the redemption inquiry and determining a redemption status; communicating the redemption status to the point of transaction (Fig. 4; Fig. 5; Fig. 6).

Also, in regards to claim 62, Postrel further discloses implementing an award program in which successive qualifying behaviors of specified qualifying users at one or more qualifying

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merchant(s) produces successively different awards (Fig. 4; Fig. 5; Fig. 6; Paragraph [53]; Paragraph [54], 'Access to video games may be afforded to the traveler where the availability of different games depends on the number of reward points traded in by the traveler.'; Paragraph [13, 32, 33]). Notice in these citations from Postrel that the user(s) performs successive qualifying behaviors, acquires more and more points in the system as more behaviors are performed, and that the different amounts of user points allows the user access to different awards as the amount of points increases.

Additionally, Postrel discloses implementing award redemption at the point of transaction (Fig. 4; Fig. 5; Fig. 6; ([42])).

Postrel does not explicitly disclose utilizing user demographic information. However, Postrel discloses utilizing user account information, user credit card information, user smart card information (as disclosed above), user registration/name/login information, and user profile and preference and account information (Fig. 5). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that Postrel can utilize user demographic information. One would have been motivated to do this in order to better present the user content of interest ([8, 27]).

Also, in further regards to claim 42, Postrel discloses utilizing user preference, hobby, interest, demographic information (Fig. 5, Fig. 8). And, Postrel discloses utilizing demographic/preference information to determine the user's eligibility to participate in marketing programs ([15, 34]). Note that the servers can utilize the information to determine which programs to notify the user concerning participation in or when or whether to advertise/market to a user.

Additionally, Postrel makes awards or determine eligibility for awards ([4, 5, 10, 11, 15, 29, 42]; Fig. 3). Note that the awards are made at time of purchase based on the agreement for, for example, dollars utilized in purchase to points awarded ratio. Also, notice the preselected award criterion can be that the user is making a purchase or making a purchase utilizing dollars where the dollar amount is rewarded. Also, notice that Postrel states that these rewards at time of purchase are old, well known, and obvious. Also, Postrel discloses a rate calculation for rewards at time of purchase (Fig. 3, citations preceding). Also, note that Postrel gives a certain amount of points for certain dollars spent and that this qualifies as a rate calculation where the rate is the amount of points per dollar spent.

Also, Postrel discloses points/awards provided at time of transaction ([4, 5, 10, 11, 15, 29, 42]; Fig. 3).

Also, Postrel discloses point of transaction, identifiers, swiping, and the use of financial instruments at the point of transaction, please see these citations concerning the point of transaction, the use of cards, the use of credit cards, the use of smart cards ([4, 5, 10, 11, 15, 29, 42]; Fig. 3). Also, see the reference to cards or credit cards in Figures 1, 2, 4 (Figures 1, 2, 4).

Also, Postrel discloses marketing methods, please see these citations concerning promotions and targeted promotions and user targeting ([15, 34]).

Additionally, Postrel does not explicitly discloses that the reward program identifier and credit card identifier can be sent to different parties at time of transaction. However, Postrel discloses both a reward program identifier and host and also a credit card identifier and credit card company (Fig. 2; Fig. 4; Fig. 5; [3, 15, 29]). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to that the separate

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information concerning the user can be reported to separate companies/hosts. One would have been motivated to do this in order to allow the user to utilize different credit cards with the same reward system (Fig. 2; Fig. 4; Fig. 5).

Additionally, Postrel discloses an automated marketing/advertising method ([8, 12, 17, 27, 29, 47]). Postrel further discloses promotions and targeted promotions and user targeting (15, 34). Postrel further discloses that there are a plurality of marketing methods that are administered by a central host controller (Figure 4 and Figure 5; [15]). Note in Figure 5 that there are numerous 'Merchant Offers' and numerous 'Merchant Connection Profiles'. Also, note in Figure 5 that the Trade Server (item 54) acts as a central host controller and that the Merchant (30) is remote from the Trade Server. Figure 5 also discloses individual user accounts and also individual merchant accounts ('User Accounts', 'Merchant Connection Profiles'). Hence, Figure 5 discloses an automated marketing method implemented using a host controller system administering a plurality of marketing programs and involves acquiring a unique user identifier, a unique merchant identifier, and that the merchant and/or user can be remote from the host controller system.

Postrel further describes how the trading server functions as a central host controller ([36, 37]). Also, notice that in Fig. 5 all the functions of database 54 are part of the trade server 20 (Figure 5; [31], 'as defined in a database 54 on the trading server as shown in FIG. 5.)

Postrel further discloses a matrix/table rules database that can be referenced to determine the value of particular user actions/behaviors (Figures 3, 5, 9; [36, 3, 15, 29, 33]). Note in Figure 3 that different behaviors receive different amounts of rewards. Also, note in Figure 5

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that the 'Merchant Offers' discloses the different offers for different behaviors by users. And, in Figure 9, item 902, Merchant Offers are communicated to the user.

Also, in regards to demographic information, Postrel discloses utilizing user preference, hobby, interest, demographic information (Fig. 5, Fig. 8). Postrel discloses utilizing demographic information to determine the user's eligibility to participate in marketing programs ([15, 34]). Note that the servers can utilize the information to determine which programs to notify the user concerning participation in.

Also, Postrel Figure 7 further discloses the user utilizing the system at a point of transaction remote from the host controller system (Figure 7). And, Examiner further notes that Postrel discloses points/awards provided at time of transaction at the merchant/POS/remote location ([4,5, 10, 11, 15, 29, 42]; Fig. 3, 4, 5). In further regards to transactions at the merchant/POS/remote location, Postrel discloses concerning point of transaction, identifiers, swiping, and the use of financial instruments at the point of transaction, please see these citations concerning the point of transaction, the use of cards, the use of credit cards, the use of smart cards ([4, 5, 10, 11, 15, 29, 42]; Fig. 3). Also, see the reference to cards or credit cards in Figures 1, 2, 4 (Figures 1, 2, 4).

Additionally, Postrel discloses communicating information relating to delivery of an award or an updated award status condition to the user at the point of transaction (Fig. 2; Fig. 4; Fig. 5; Fig. 6).

Additionally, Postrel discloses acquiring the user identifier and at least one transaction payment identifier in a single step at the point of transaction (Fig. 2; [42]). And, Postrel

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discloses a single step at the point of transaction is a single card swipe and the card is a financial instrument (Fig. 2; [42, 33]).

Additionally, Postrel does not explicitly disclose that the trading sever manages reward programs for other entitites where the other entitites do not also manage the reward program.

However, Fitzpatrick discloses multiple, different award programs that are stored at and administered/operated by a central/host controller (Abstract; Figures 1, 2, 3, 7, 8, 10, 11, 14).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that the functions of Postrel's reward and trading servers can be combined into one host/central server that interacts with the Merchants of Postrel. One would have been motivated to do this in order to provide a single source for the various reward programs and a simpler operations scheme.

Also, Examiner further notes that MPEP 2144.04.V. discloses that making integral or continuous is an obvious variation. And, in this case Fitzpatrick's makes integral or continuous the separate reward and trading server of Postrel. Hence, it is obvious to a skilled artisan that the functions of Postrel's distinct reward and trading server can be combined into one central server.

Claim 2: Postrel discloses an automated marketing system according to claim 1, additionally comprising updating at least one of a user, merchant and user behavior file and storing the user, merchant and user behavior identifier (Fig. 4; Fig. 5).

Claim 4, 60, 61: Postrel discloses an automated marketing system according to claim 1, additionally comprising communicating information relating to identification of the user, user behavior, the delivery of an award, or an updated award status condition to the merchant at the point of transaction (Fig. 4; Fig. 5; Fig. 6; Fig. 7).

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Claim 6: Postrel discloses an automated marketing system according to claim 1, additionally comprising displaying information relating to delivery of an award or an updated award status condition at the point of transaction (Fig. 2; Fig. 4; Fig. 5; Fig. 6; Fig. 7).

Claim 7: Postrel discloses an automated marketing system according to claim 1, additionally comprising performing an award prioritization processing step after the rate calculating processing step when a transaction is eligible for multiple awards ([33, 46]).

Claim 8: Postrel discloses an automated marketing system according to claim 1, wherein user eligibility for participation in at least one marketing program is based on at least one of the qualifiers selected from the group consisting of membership in a participating organization; participation in a loyalty program; participation in a gift card program; holding of a credit instrument; holding of a debit instrument; holding of an account; membership in a subscriber base; participation in a service; and simultaneous or prior purchase of qualifying good(s) or service(s) (Fig. 2; Fig. 4; Fig. 5; Fig. 6; Fig. 7).

Claim 9: Postrel discloses an automated marketing system according to claim 1, wherein the award is expressed in an award currency selected from the group consisting of points, gift cards, gift certificates, instant prizes, custom coupons, merchandise, credit; services; benefits; and cash (Fig. 4; Fig. 5).

Claim 10: Postrel discloses an automated marketing system according to claim 1, wherein the user behavior identifier is selected from the group consisting of: identification of predetermined item(s) purchased; identification of predetermined service(s) purchased; identification of item type purchased; identification of service

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type purchased; purchase price of individual item(s); purchase price of individual service(s); presence of user in a location; purchase in a location; purchase value total; purchase date; purchase time; purchase location; award delivered; and award accumulated (Fig. 4; Fig. 5).

Claim 11: Postrel discloses an automated marketing system according to claim 1, additionally comprising means for modifying the eligibility of at least one of the user identifier, the merchant identifier and the user behavior identifier to determine eligibility for participation in at least one marketing program (Fig. 6; Fig. 8).

Claim 12: Postrel discloses an automated marketing system according to claim 1, additionally comprising means for modifying the rate calculation processing step for determining eligibility of the user, the merchant and the user behavior for an award based on a modified set of criteria different from the preselected set of criteria (Fig. 4; Fig. 5; Fig. 9).

Claim 17: Postrel discloses an automated marketing system according to claim 1, wherein qualifying customer behaviors are accumulated over a time period to calculate awards ([12], 'period').

Claim 18: Postrel discloses a automated marketing system according to claim 1, wherein the host controller system additionally accesses user behavior historical information based on the user identifier, and the rate calculation processing step determines the eligibility of the user, merchant and user behavior for an award based, at least in part, on the user behavior historical information (Fig. 4; Fig. 5).

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Claim 19: Postrel discloses the above. Postrel does not explicitly disclose utilizing user demographic information. However, Postrel disclose utilizing user account information, user credit card information, user smart card information (as disclosed above), user registration/name/login information, and user profile and preference and account information (Fig. 5). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made that Postrel can utilize user demographic information. One would have been motivated to do this in order to better present the user content of interest ([8, 27]).

Claim 20: Postrel discloses an automated marketing system according to claim 1, additionally comprising implementing multiple marketing programs, involving multiple merchants and/or merchant groups, upon validation of one or more user identifier(s) (Fig. 4; Fig. 5).

Claim 21: Postrel discloses an automated marketing system according to claim 1, additionally comprising implementing multiple marketing programs, involving multiple user identifiers or user identifier groups, upon validation of one or more merchant identifier(s) (Fig. 4; Fig. 5).

Claim 22: Postrel discloses an automated marketing system according to claim 1, additionally comprising acquiring the user identifier and at least one transaction payment identifier in a single step at the point of transaction (Fig. 2; [42]).

Claim 23: Postrel discloses an automated marketing system according to claim 22, wherein the single step at the point of transaction is a single examination of an identifying Object (Fig. 2; [42]).

Claim 24, 43, 46: Postrel discloses an automated marketing system according to claim 22, wherein the single step at the point of transaction is a single card swipe and the card is a financial instrument (Fig. 2; [42, 33]).

Claim 25: Postrel discloses an automated marketing system according to claim 22, wherein the user identifier, the merchant identifier, the user behavior identifier, and at least one transaction payment identifier are acquired in a single step at the point of transaction; the user identifier, the merchant identifier and the user behavior identifier are communicated to the host controller over a communications network; and the at least one transaction payment identifier is additionally communicated to an appropriate financial institution or intermediate for processing (Fig. 2; Fig. 4; Fig. 5; [3, 15, 29, 33]).

Claim 27: Postrel discloses an automated marketing system according to claim 26, wherein the at least one transaction payment identifier is additionally communicated to the host controller over a communications network (Fig. 4; Fig. 5).

Claim 28: Postrel discloses an automated marketing system according to claim 25, wherein user identifier and at least one transaction payment identifier are communicated to the host controller over a communications network, and transaction payment identifier is additionally communicated from the host controller to an appropriate financial institution or intermediate for processing ([42; 43, 33]; Fig. 4; Fig. 5).

Claim 29: Postrel discloses an automated marketing system according to claim 22, wherein a credit or debit account identifier is acquired at the point of transaction and is communicated to an appropriate institution for validation and approval (Fig. 4; Fig. 5; Fig. 6).

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Claim 30: Postrel discloses an automated marketing system according to claim 29, additionally comprising transmitting the customer identifier to the marketing program host controller following validation and approval of the transaction (Fig. 5).

Claim 32, 51: Postrel discloses an automated marketing system according to claim 31, additionally comprising validating eligibility of at least one of the user identifier, the merchant identifier and user behavior identifier to determine eligibility for award redemption, updating the award status condition based on the award redemption, and communicating information relating to redemption of an award to the point of transaction over a communications network (Fig. 4; Fig. 5; Fig. 6).

Claim 39: Postrel discloses an automated marketing system according to claim 1, additionally comprising analyzing data collected relative to user identifications and/or merchant identifications and/or user behaviors and providing data relating to the analysis to qualifying merchants/merchant groups through an Internet Website portal ([5, 9, 32]; Fig. 4; Fig. 5).

Claim 40: Postrel discloses an automated marketing system according to claim 1, wherein a data collection device at the point of transaction acquires the user identifier, the merchant identifier and the user behavior identifier, and the data collection device is selected from the group consisting of electronic registers, optical and magnetic scanners and readers, barcode scanners, magnetic strip scanners, radio frequency receivers, transaction card readers, communications devices, computers, personal digital assistants, telephones and pagers (Fig. 2; [42]).

Claim 41: Postrel discloses an automated marketing system according to claim 1, wherein a personal communications device acquires data relating to at least one of a user identifier, a merchant identifier and a user behavior and communicates the data to the host controller system over a communications network ([14, 28]).

Claim 47: Postrel discloses an automated marketing system of claim 1 or claim 42, in which the user identifier information is detected by recognition of a number, a barcode, a fingerprint, a retinal pattern, or a radio frequency signal (Fig. 2; [42]).

Claim 48: Postrel discloses an automated marketing system of claim 1 or 42, in which data is transmitted to the host controller system via local or regional phone lines, dedicated data transmission lines, cable, cellular, personal communication systems, microwave, radio frequency, fiberoptic, global communications networks or satellite networks ([14, 28, 54]).

Claim 49: Postrel discloses an automated marketing system of claim 1 or 42, in which information relating to delivery of an award or an updated award status condition is transmitted to the point of transaction via local or regional phone lines, dedicated data transmission lines, cable, cellular, personal communication systems, microwave, radio frequency, fiberoptic, global communications networks or satellite networks ([14, 28, 54]).

Claim 50: Postrel discloses an automated marketing system of claim 1 or 42, additionally comprising converting awards from different marketing programs into a common award currency and calculating and transferring award balances expressed in the common award currency to the host controller system (Fig. 4; Fig. 5).

Claim 52: Postrel discloses an automated marketing system of claim 50, wherein the common award currency is redeemable through any participating merchant or merchant group (Fig. 4; Fig. 5).

Claim 53: Postrel discloses an automated marketing system of claim 1 or 42, additionally comprising validating the eligibility of at least one of the user identifier, the merchant identifier and the user behavior identifier to determine eligibility for participation in multiple marketing programs (Fig. 4; Fig. 5; Fig. 6).

Claim 55: Postrel discloses an automated marketing system of claim 1 or 42, in which the host controller system administers multiple marketing programs associated with multiple merchants and/or merchant groups, and following acquisition and communication of the user identifier, the host controller validates eligibility of the user identifier to determine eligibility for participation in multiple marketing programs (Fig. 4; Fig. 5).

Claim 56: Postrel discloses an automated marketing system of claim 1 or 42, additionally comprising issuing gift certificates in an award currency usable in at least one marketing program administered by the host controller system and redeemable by at least one participating merchant and/or merchant group ([42]).

Claim 57: Postrel discloses an automated marketing system of claim 56, in which the gift certificate in the award currency is associated with the user identifier and communicated to the host controller system, and gift certificate redemption is administered by the host controller system through participating merchants and/or merchant groups (Fig. 5; Fig. 5; Fig. 6).

Claim 58: Postrel discloses an automated marketing system of claim 56, in which the gift certificate information is stored in the host controller system in a common award currency, and is convertible and redeemable through participating merchants and/or merchant groups in multiple currencies (Fig. 4; Fig. 5).

Claim 67: Postrel discloses a system for implementing a marketing program comprising a centralized host controller in communication with a plurality of point of transaction devices by means of a communications system, the centralized host controller additionally in communication with a user/customer database, a merchant database, one or more program matrix rules modules, one or more data management storage & retrieval programs, one or more GIS applications, and a dynamic custom messaging system (Fig. 4; Fig. 5).

Claim 78, 83: Postrel discloses updating the award balance (Figure 5, 7, [38]).

Claim 80: Postrel discloses award program tie-ins ([15]).

Claims 81, 82: Postrel discloses validating the ability of the user to participate in multiple or one marketing programs (Figure 6, item 602, item 606; Figure 7, item 706; Figures 4, 5; [15])

Claim 84: Postrel discloses that the host controller stored data relating to users, merchants, and user behaviors (Figure 5, item 54; Figure 3).

Claim 85: Postrel discloses a redemption inquiry regarding an award balance (Figure 7, item 710).

4. Claims 5, 54, 66, 70, 74 are rejected under 35 U.S.C. 103(a) as being unpatentable over Postrel (20040098317) in view of Fitzpatrick (20020046138) in view of Eggleston (6,061660).

Claim 5, 54, 66, 70, 74: Postrel discloses the above. Postrel does not explicitly disclose printing receipts. However, Postrel discloses printers ([54]).

Eggleston further discloses printing information relating to delivery of an award or an updated award status condition on a transaction receipt generated at the point of transaction (col 45, lines 5-15).

Eggleston further discloses random prizes and a variety of award schemes (Fig. 20).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Eggleston's receipt for awards and variety of prizes and awards to Postrel's awarding a user for certain behaviors. One would have been motivated to do this in order to better track what has been provided to the user (Postrel, Fig. 5) and to provide awards/incentives of interest to the user.

Eggleston further discloses instant win promotions (col 30, lines 10-25; col 42, lines 55-67) and personalized point of sale promotions (col 39, lines 50-65).

Also, in regards to claim 5, Examiner notes that Applicant uses the word "or" in this claim.

5. Claims 13-15, 33, 34, 36-38, 63-65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Postrel (20040098317) in view of Fitzpatrick (20020046138) in view of Bednarek (20050251440)

Claim 13, 15, 63-65: The prior art discloses the above. Postrel does not explicitly disclose increasing or decreasing awards based on frequency of utilization during a time period.

However, Bednarek discloses increasing or decreasing awards based on frequency of utilization during a time period (Bednarek, [295, 297, 298]). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Bednarek's adaptable rewards to Postrel's variety of awarding structures (Postrel, Fig. 4; Fig. 5). One would have been motivated to do this in order to present awards that better incite certain user behaviors.

Claims 33, 34, 36-38:

Postrel discloses the above. Postrel does not explicitly disclose charging a fee to the sponsors/merchants for utilizing the system.

However, Bedarek discloses increasing or decreasing awards based on frequency of utilization during a time period (Bednarek, [295, 297, 298]).

Fitzpatrick discloses variable fees, flat fees, percentage fees, fees tied to the prizes for an award program ([97, 110, 100]; claims 8, 12, 13, 46).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to add Fitzpatrick's variable fees tied to the awards and Bedarek's varying awards Postrel's awards program with multiple sponsors. One would have been motivated to do this in order to provide a better way to compensate for the expenses associated with running an awards program.

Response to Arguments

6. Applicant's arguments with respect to the claims have been considered but are moot in grounds of the rejection above. Please note the addition of the Fitzpatrick reference above.

Examiner further notes the below.

On page 21 of the Applicant's Remarks dated 7/5/2007, Applicant states:

"The trade server of Postrel, which the Examiner has identified as the equivalent to applicants' claimed "host controller system," aggregates awards that have been issued (previously and separately) by various award programs, e.g. airline reward points and, based on user preferences and user input, arranges with merchants for the redemption of those awards. Redemption offers may be communicated to the trading server by a reward server and/or a merchant (See, e.g. Fig. 9). Determination of award eligibility, calculation of awards, assignment of awards, and other award-related activities, based on a user qualifying behavior are carried out by separate "reward servers," such as the airline reward server illustrated schematically in Fig. 5 of Postrel, or the separate airline, credit card and marketing reward servers illustrated schematically in Fig. 4 of Postrel. There is no indication or suggestion in Postrel that the trading server plays any role other than in redemption of rewards."

However, Examiner notes that it is the Applicant's claims as stated in the Applicant's claims that are being rejected with the prior art. Also, although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). And, Examiner notes that claims are given their broadest reasonable construction. See *In re Hyatt*, 211 F.3d 1367, 54 USPQ2d 1664 (Fed. Cir. 2000).

Also, it must be presumed that the artisan knows something about the art apart from what the references disclose. *In re Jacobv*, 309 F.2d 513, 135 USPQ 317 (CCPA 1962). The problem cannot be approached on the basis that artisans would only know what they read in references; such artisans must be presumed to know something about the art apart from what the references

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disclose. In re Jacoby. Also, the conclusion of obviousness may be made from common knowledge and common sense of a person of ordinary skill in the art without any specific hint of suggestion a particular reference. In re Bozek, 416 F.2d 1385, USPQ 545 (CCPA 1969). And, every reference relies to some extent on knowledge or persons skilled in the art to complement that which is disclosed therein. In re Bode, 550 F.2d 656, USPQ 12 (CCPA 1977).

And, when there is a design need or market pressure to solve a problem and there are a finite number of identified, predictable solutions, a person of ordinary skill has good reason to pursue the known options within his or her technical grasp. If this leads to the anticipated success, it is likely the product not of innovation but of ordinary skill and common sense. In that instance the fact that a combination was obvious to try might show that it was obvious under §103.

If a person of ordinary skill in the art can implement a predictable variation, and would see the benefit of doing so, §103 likely bars its patentability. Moreover, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond that person's skill. KSR Int'l Co. v. Teleflex, Inc., No 04-1350 (U.S. Apr. 30, 2007).

Also, KSR states that it is obvious to recite combination which only unite old elements with no change in their respective functions and which yield predictable results. KSR, 127 S.Ct. at 1741, 82 USPQ2d at 1396.

And, Postrel's trading server of Figure 5 can perform all the function of item 54 in Figure 5. Also, the Trade server 20 of Figure 5 can be connected to a reward server 10 or directly to a

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user 40 or directly to a merchant 30. Note that the merchant can directly interact with the Trade Server and, thereby, have access to all of the functions of item 54 in Figure 5 (Figure 5 and below):

“[28]. . . The merchant computer 30 is representative of any site that can communicate with the network that has goods or services for sale or trade. The merchant may have a direct relationship with the trading server where the direct relationship allows for a streamlined process for allowing a user to acquire products offered via the merchant computer.”

Also, note that in real time for a real time purchase the trading server can be contacted by merchant and that the trading server can then facilitate the transfer of points directly to the merchant for the real time purchase:

“[0032] In the second part of the transaction (see FIG. 7), the user from a user computer 40 may make a request 150 to purchase an item from an associated merchant computer 30. In the preferred embodiment, the merchant computer system will be a networked computer system accessible via the Internet. The user would visit the site by selecting on a link from the trading server's web site or by entering the name or address of the destination site. The user may identify one or many items to be acquired from one or several merchants 30. The trading server computer 20 would confirm that the user has sufficient points to purchase the selected item by checking the user's reward exchange account 54. The trading server computer 20 would request the merchant computer to deliver the item to the user. The user delivery information may be retrieved from the trading server computer 20 or may be supplied in some other manner. The trading server computer 20 would decrease the user exchange account 54 by the number of points corresponding to the purchased item. The trading server computer 20 conveys

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consideration to the merchant computer 30 equivalent to the cost of the item by means well known in the art of electronic commerce (eg. by a pre-existing account, credit card, etc.) In the alternative, the consideration may be a direct transfer of points to an account associated with the merchant.”

Also, notice that the “Merchant Conversion Rates” in Figure 5 can be used in real time to determine how many points to use from the Trading server towards the purchase at the Merchant and vice versa.

Hence, in the example above from Postrel, the trading server determines award eligibility, calculates awards, assigns awards, and other award-related activities, based on a user qualifying behavior.

Also, note the further functions of the trading server of Postrel:

“[36]. . .In the preferred embodiment, the server has memory means for storing the user account information, user profiles and rules specified by the user, system, or merchant. The trading server also has communications means to allow users to access the server and to allow the trading server to contact reward servers and processing means to interpret the rules and coordinate the contact to the respective reward servers. The processing means is adapted to allow the user to request and exchange consideration for rewards from reward servers. The processing means additionally is adapted to coordinate the exchange of consideration and increase or decrease the user exchange accounts stored in memory in response to actions performed by the user computer, reward server and merchants. “

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Note that the trading server can store rules specified by the user, system or merchant, that the trading server can interpret the rules, and that the trading server can respond to actions performed by the user, or reward server, or merchant.

And, Postrel discloses an automated marketing/advertising method ([8, 12, 17, 27, 29, 47]). Postrel further discloses promotions and targeted promotions and user targeting (15, 34). Postrel further discloses that there are a plurality of marketing methods that are administered by a central host controller (Figure 4 and Figure 5; [15]). Note in Figure 5 that there are numerous 'Merchant Offers' and numerous 'Merchant Connection Profiles'. Also, note in Figure 5 that the Trade Server (item 54) acts as a central host controller and that the Merchant (30) is remote from the Trade Server. Figure 5 also discloses individual user accounts and also individual merchant accounts ('User Accounts', 'Merchant Connection Profiles'). Hence, Figure 5 discloses an automated marketing method implemented using a host controller system administering a plurality of marketing programs and involves acquiring a unique user identifier, a unique merchant identifier, and that the merchant and/or user can be remote from the host controller system.

Postrel further describes how the trading server functions as a central host controller ([36, 37]). Also, notice that in Fig. 5 all the functions of database 54 are part of the trade server 20 (Figure 5; [31], 'as defined in a database 54 on the trading server as shown in FIG. 5.)

Postrel further discloses a matrix/table rules database that can be referenced to determine the value of particular user actions/behaviors (Figures 3, 5, 9; [36, 3, 15, 29, 33]). Note in Figure 3 that different behaviors receive different amounts of rewards. Also, note in Figure 5

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that the 'Merchant Offers' discloses the different offers for different behaviors by users. And, in Figure 9, item 902, Merchant Offers are communicated to the user.

Also, in regards to demographic information, Postrel discloses utilizing user preference, hobbie, interest, demographic information (Fig. 5, Fig. 8). Postrel discloses utilizing demographic information to determine the user's eligibility to participate in marketing programs ([15, 34]). Note that the servers can utilize the information to determine which programs to notify the user concerning participation in.

Also, Postrel Figure 7 further discloses the user utilizing the system at a point of transaction remote from the host controller system (Figure 7). And, Examiner further notes that Postrel discloses points/awards provided at time of transaction at the merchant/POS/remote location ([4,5, 10, 11, 15, 29, 42]; Fig. 3, 4, 5). In further regards to transactions at the merchant/POS/remote location, Postrel discloses concerning point of transaction, identifiers, swiping, and the use of financial instruments at the point of transaction, please see these citations concerning the point of transaction, the use of cards, the use of credit cards, the use of smart cards ([4, 5, 10, 11, 15, 29, 42]; Fig. 3). Also, see the reference to cards or credit cards in Figures 1, 2, 4 (Figures 1, 2, 4).

Also, Postrel makes awards or determine eligibility for awards ([4, 5, 10, 11, 15, 29, 42]; Fig. 3). Note that the awards are made at time of purchase based on the agreement for, for example, dollars utilized in purchase to points awarded ratio. Also, notice the preselected award criterion can be that the user is making a purchase or making a purchase utilizing dollars where the dollar amount is rewarded. Also, notice that Postrel states that these rewards at time of purchase are old, well known, and obvious. Also, Postrel discloses a rate calculation for rewards

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at time of purchase (Fig. 3, citations preceding). Also, note that Postrel gives a certain amount of points for certain dollars spent and that this qualifies as a rate calculation where the rate is the amount of points per dollar spent.

Hence, Postrel renders obvious an automated marketing method implemented using a host controller system administering a plurality of marketing programs and involves acquiring a unique user identifier, a unique merchant identifier, and a user behavior identifier at a point of transaction remote from the host controller system; and also utilizing a program matrix rules module.

However, Postrel does not explicitly disclose that all the functions of the reward server are also performed at the trading server. Hence, please see the addition of the Fitzpatrick reference above.

Conclusion

The following prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- a) Gardenswartz (2002/0004754) discloses demographic criteria targeted promotions (Figures, 2a, 2b, 4a, 4b);
- b) Deaton (5,687,322) discloses targeting and point of sale promotions.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur Duran whose telephone number is (571) 272-6718. The examiner can normally be reached on Mon- Fri, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eric Stamber can be reached on (571) 272-6724. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Arthur Duran
Primary Examiner
Art Unit 3622

7/18/2007